upper courts on the ground of ancient usage and on the authority of a passage in the *Mirror of Justices* quoted quite incidentally by Coke.

It may be that Parliament will give recognition to the patriotic and devoted way in which women are throwing themselves into the services incident to the war emergency and will remove by legislation these and other professional limitations which have retarded the economic advancement of women and have been the occasion of great injustice and of resulting bitterness.

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WASHINGTON NOTES

THE NEW 5 PER CENT RATE DECISION

In handing down a decision in the 5 per cent rate case on December 18, the Interstate Commerce Commission largely reverses the earlier decision rendered in July last by permitting the flat 5 per cent increase asked by the roads to be granted in so far as it applies to the great mass of commodities. Those to which it does not apply are, for the most part, the heavier products, such as coal, which are, however, the staple of the freight of certain roads. The advance in income to be derived from the decision is therefore not nearly so much as it would have been had the increase not been restricted by excepting so large a percentage of the heavy freight of the roads. Estimates indicate that the gross increase in freight revenue granted by the decision will amount to $30,000,000 annually; the amount which the roads had hoped to get through a general 5 per cent increase was estimated at $50,000,000 when their case was first presented to the Commission. It appears that the attitude of the Commission has materially altered, and the explanation given for this change is that new conditions arising out of the European war have developed. Not only are the roads obliged to meet higher expenses and pay higher wages, but they must also bear the greater expenses of providing capital under the more difficult conditions existing in the market at the present time, owing to the destruction of wealth in Europe and the consequently higher rates of interest which will inevitably prevail in all financial markets. It was consequently deemed right to grant the roads increased revenue to enable them to carry these burdens. The decision of the Commission is surprising for it was quite generally felt at the time of the last hearings before that body that the roads had not succeeded in strength-

ening the case presented by them last April on the basis of which their original application was refused. The salient features of the Commission's decision on this matter are as follows:

While we differ as to the relative importance to be attached to the various considerations presented, we agree in the conclusion that, by virtue of the conditions obtaining at present, it is necessary that the carriers' revenues be supplemented by increases throughout official classification territory. Whatever the consequences of the war may prove to be, we must recognize the fact that it exists, the fact that it is a calamity without precedent, and the fact that by it the commerce of the world has been disarranged and thrown into confusion. The means of transportation are fundamental and indispensable agencies in our industrial life and for the common weal should be kept abreast of public requirements.

The original report, besides approving a rate increase in central freight association territory, suggested 10 sources of additional revenue for all carriers throughout official classification territory; the present report, recognizing the existence of a new situation since July 29, acquiesces in a territorial extension of the relief granted to the central freight association lines by permitting the carriers to file tariffs providing, with certain exceptions specified herein, for horizontal rate increases in official classification territory. It is expected that the constructive work suggested in the original report for the purpose of conserving and augmenting the net revenues of the carriers generally will be carried forward without interruption.

Carriers will be required to keep an account of the additions to their revenues from increases in rates subsequent to July 29, 1914, and from new charges, and to report separately thereon to the Commission at the end of 12 and 24 months, respectively.

In speaking of the extent of the advances to be granted, the Commission says:

For various reasons we shall except from the proposed increase the following rates:

1. Rail-lake-and-rail, lake-and-rail, and rail-and-lake rates. It is shown on the record that since the rail carriers acquired ownership and control of the lake lines successive increases have been made in the rates via lake tending to lessen the differences between them and the all-rail rates.

2. Rates on bituminous coal and coke. Not long since these rates were investigated and maximum rates were prescribed by the Commission. The key rates upon bituminous coal—the rate from the Pittsburgh district to Youngstown, and the rate on lake cargo coal to Ashtabula—have been fixed in the light of the various factors which enter into the transportation of such coal. The prevailing rates are remunerative, and the financial condition of the principal bituminous-coal carriers is in marked contrast with that of many

of the other carriers in official classification territory. Twice in the not-distant past the rates on bituminous coal have been increased 5 cents a ton, and would seem now to be as high as may fairly be allowed. It must be remembered also that the carriers are not seeking general increases in rates on anthracite coal, and both kinds of coal are used in competitive markets. As to coke, the rates controlling the greater volume of traffic now moving in official classification territory have recently been set by the Commission upon a basis which was specifically designed to guard against shrinking the carriers' revenue therefrom, and which really resulted in substantial additions to their earnings on that traffic.

3. Rates on anthracite coal and iron ore, largely because they are before us for review in other proceedings.

4. Rates held by unexpired orders of the Commission.

In our original report we declined, for reasons there stated, to allow increased rates in central freight association territory on cement, starch, brick, tile, clay, and plaster. On further consideration, in the light of the existing situation, these rates may be increased throughout official classification territory under the limitations herein set forth.

Joint rates between official classification territory, on the one hand, and southeastern territory, the southwest, and points on or east of the Missouri River, on the other, may be increased not to exceed 5 per cent of the division of the rate accruing to the carriers in official classification territory. If these increases involve a change in the relationship under the long-and-short-haul rule between intermediate points and more distant points outside of official classification territory relief from the fourth section of the act must first be secured on regular application.

Interstate rates to and from New England from and to points in trunk line or central freight association territory, where necessary to preserve established relationships between points or ports in New England and points or ports in trunk line territory, may be increased not to exceed 5 per cent.

Subject to the maintenance of the established Atlantic port differentials rates to and from New York may be increased not to exceed 5 per cent, and rates to and from Portland, Boston, Philadelphia, and Baltimore may be increased to the extent necessary to maintain said differentials.

Except as otherwise above specified rates in official classification territory may be increased by not more than 5 per cent; but rates increased since July 29, 1914, may not now be again increased so as to exceed those then in effect by an aggregate of more than 5 per cent of the intraterritorial rate, or of the portion or division of the intraterritorial rate, or of the portion or division of the interterritorial rate accruing to the road or roads in official classification territory, as the case may be.

If fractions in excess of one-half a mill are rounded upward, fractions less than one-half a mill are to be discarded.

In some instances, and in part because of the pendency of this proceeding, we have recently suspended proposed increased rates in this territory. Car-

riers may, if they so elect, now cancel such tariffs so suspended and file in lieu thereof tariffs which conform to the limitations above specified. If that is done such suspensions will be vacated.

To the extent above indicated we now modify our previous finding and carriers affected may file, effective on not less than 10 days' notice, such tariffs as do not offend against the restrictions above stated.

THE FEDERAL RESERVE BOARD AS A GOVERNMENT BODY

In answer to questions from Secretary of the Treasury McAdoo the Department of Justice has rendered an opinion, under date of December 18, as to the status of the Federal Reserve Board that is likely to be of large importance. In brief the Attorney-General holds that the Board, while a government body subject to audit as are other bodies of like character, is independent of the Treasury. Secretary McAdoo had asked (*a*) whether accounts of moneys derived from the semiannual assessment to be levied on federal reserve banks by the Federal Reserve Board are subject to audit by one of the auditors of the Treasury Department, and (*b*) what was the status of the Federal Reserve Board, particularly with reference to the Treasury Department.

The Attorney-General in his opinion adduces much technical evidence and precedent to show what constitutes an officer or body of such officers "public" in the legal sense of that word, and finally rests his case largely upon the character of the moneys received by the Board for its operations and the methods in accordance with which it is required to carry on its disbursements. This leads to the conclusion that the members of the Board are public officers, hence subject to general governmental control instead of being, as some have thought, a quasi-private organization not subject to public law and not under the control of public auditing officers. The opinion is not, of course, of the force of a court decision, but will govern until superseded either by a different opinion or by some court action reversing it in whole or in part, should there ever be such.

In dealing with the public-money question, the Attorney-General says:

> I am of opinion that moneys received by the Federal Reserve Board, under section 10 of the act of December 23, 1913, are "public moneys" within the meaning of these auditing statutes, for the following reasons, among others:
>
> 1. The assessments are levied by a board whose members in respect to appointment, tenure, duties, and compensation meet all requirements of the definition "public officers" and "officers of the United States."

2. The assessments are levied by such officers pursuant to the provision of a federal statute and are devoted to the payment of official salaries and the expenses of this official board.

3. These moneys after collection are no longer the property of the paying banks, and must be viewed as moneys belonging to the United States, and therefore public moneys as defined by the Supreme Court of the United States.

4. Other provisions of the Federal Reserve act (secs. 11-*c* and 16), dealing with interest charges, taxes, and penalties, can only be satisfied by deposit in the Treasury of the levies, taxes, and penalties so imposed, and there seems to be no logical ground for distinction between such assessments and the ones in question. The idea of necessary public control is also strengthened by the requirements of Rev. Stat. sec. 3639.

The moneys received by the Federal Reserve Board under sec. 10 of the act of December 23, 1913, being thus, in my opinion, public moneys and consequently subject to audit by one of the auditors of the Treasury Department, the question is then directly presented under which paragraph of the act of July 31, 1894, *supra*, the audit is to be made. This involves the further question on which you have asked my opinion: namely, whether the Federal Reserve Board is an independent board, commission, or Government establishment or whether it is a bureau, office, or division or otherwise a part of the Treasury Department.

In dealing with the broader question of the position of the Board the opinion further says:

That the Federal Reserve Board is a "board" or "establishment" of the government within the meaning and intent of those words as used in the fifth paragraph of sec. 7 of the act of July 31, 1894, is plain from the provisions of the Federal Reserve act and the explanation of the status of the Board contained in the reports accompanying the original bills in Congress.

Consideration of the history of the Federal Reserve Bank act, of the general scheme of the whole act, of the functions to be performed by the Federal Reserve Board and of the method of their performance, leads me to the clear opinion that the Board is an independent board or government establishment.

The Federal Reserve Board is not merely a supervisory, but is a distinctly administrative board with extensive [general] powers, ... [and] specific grants of authority to exercise about forty other powers. Moreover, in subdivision (i) of sec. 11 the all-embracing requirement appears that "said Board shall perform the duties, functions, or service specified in this act, and make all rules and regulations necessary to enable said Board effectively to perform the same.

The act, further, contains no express provision that the Federal Reserve Board shall be considered as a bureau, division, or office of the Treasury Department—a significant omission in view of the fact that Congress had under consideration a bureau of that department when in sec. 16 it amended

the Revised Statutes relative to that "bureau" of which the Comptroller of the Currency was the "chief officer." . . . .

The precise relationship between the Treasury and the Board is set forth as follows:

The most significant change made in H.R. 7837 by the act as passed was the insertion, in sec. 10 of the act, of the following clause:

"Nothing in this act contained shall be construed as taking away any powers heretofore vested by law in the Secretary of the Treasury which relate to the supervision, management, and control of the Treasury Department and bureaus under such department, and wherever any power vested by this act in the Federal Reserve Board or the federal reserve agent appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary."

It is evident that, while the purpose of this clause was, amongst other things, to insure the preservation and supremacy of all existing powers of the Secretary of the Treasury in all cases where it might be claimed that such powers overlapped, or conflicted with those of the Federal Reserve Board, nevertheless by this very provision the act clearly recognized the existence of powers of the Board independent of the Secretary in cases where no such conflict existed.

OPERATION OF THE NEW BANKS

Considerable attention has been attracted by the circumstance that the federal reserve banks are not increasing in business, and on the strength of this fact there are heard many assertions to the effect that the new banking system is not succeeding. It is true that there has been a decline in the total volume of discounting—never very large—which has been done by the banks. As is shown by the consolidated statement issued a month after the official opening, cash resources had fallen off slightly and there had been a decrease of about $2,000,000 in discounts since the highest point was reached a short time ago. Notes are not increasing materially in volume, and there is a lack of demand for the resources of the institutions which to many seems to indicate that they are supernumeraries in the banking world. In order to understand the real nature of the situation at the reserve banks it must be recalled that ever since last summer a process of liquidation has been going on and that business, despite improvement, is still decidedly slack in most parts of the country. The opening of the new banks was opposed by many thoughtful bankers in the belief that it would intensify the demand for cash, and so render the credit situation more difficult. When, therefore, the banks were opened, there was a distinct effort on

the part of the Reserve Board to induce the institutions to pay their reserves in cash; and, so far as possible, in gold. This was done, the resources coming chiefly out of the banks' own vaults, so that there was little disturbance of the general situation. Having thus taken from the banks their underlying stock of cash, it was fundamentally important to protect this cash so far as prudence dictated, and the prospects seemed to require a conservative policy. It was consequently necessary so to shape policies as to safeguard the future and to insure continued retention of the means of giving relief in case of need.

To conserve the reserve stock thus acquired two methods have been resorted to: (1) the maintenance of a rate of discount slightly in advance of commercial rates; (2) the limitation of dealings to selected types of commercial paper. Rates of discount have been fixed as follows:

	Original	As Charged up to December 15
Boston	6 per cent for all maturities	5½ per cent and 6 per cent
New York	5½ " " and 6 per cent	5½ " " " 6 " "
Philadelphia	5½ " " " 6 " "	5½ " " " 6 " "
Cleveland	6 " " for all	5½ " " " 6 " "
Richmond	6 " " for all	5½ " " " 6 " "
Atlanta	6 " " and 6½ per cent	5½ " " " 6 " "
Chicago	6 " " for all	5½ " " " 6 " "
St. Louis	6 " " for all	5½ " " " 6 " "
Minneapolis	6 " " and 6½ per cent	5½ " " " 6 " "
Kansas City	6 " " " 6½ " "	6 " " for all
Dallas	6 " " " 6½ " "	5½ " " " 6 per cent
San Francisco	6 " " " 6½ " "	5½ " " " 6 " "

On the other hand the Board early enjoined on the banks the following principles:

a) That no bill be admitted to rediscount by federal reserve banks the proceeds of which have been or are to be applied to permanent investment.

b) That maturities of discounted bills be well distributed. It is the well-established practice of European reserve banks to invest only in obligations maturing within a short time. It is a general rule not to purchase paper having more than 90 days to run. The maturities of these notes and bills are there so well distributed as to enable those banks within a short time to strengthen their hold on the general money market by collecting at maturity or by reinvesting at a higher rate a very substantial proportion of their assets. Acting on this principle, the federal reserve banks should be in position to liquidate, whenever such a course is necessary, substantially one-third of all their investments within a period of 30 days. Departure from this principle will endanger the safety of the system. It is observance of this principle that affords justification for permitting member banks to count balances with federal reserve banks as the equivalent of cash reserves.

c) That bills be essentially self-liquidating. Safety requires, not only that bills held by the federal reserve banks should be of short and well-distributed maturities, but, in addition, should be of such character that it is reasonably certain that they can be collected when they mature. They ought to be essentially "self-liquidating," or, in other words, should represent in every case some distinct step or stage in the productive or distributive process—the progression of goods from producer to consumer. The more nearly these steps approach the final consumer, the smaller will be the amount involved in each transaction as represented by the bill, and the more automatically self-liquidating will be its character.

Rates of discount have been lowered since the opening to 5 per cent for short-time maturities, but the Federal Reserve Board and the governors of the federal reserve banks are prepared, it is understood, to see a further decrease of investments in discounts in some districts, for the present, at least, in view of the great ease of money now prevailing, particularly in the eastern market. Those in charge of the operation of the banks are plainly alive to the fact that they would be misunderstanding the function of federal reserve banks if in times of abundance they should try to force investments, and that they must not be governed by any desire to secure too early profits from the federal reserve banks, but must rather act from the viewpoint of what is best for the general situation.